



OFFICE OF CHIEF COUNSEL FOR ADVOCACY

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U.S. SMALL BUSINESS ADMINISTRATION

WASHINGTON, D.C. 20416

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

July 15, 1998

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, NW Suite 222  
Washington, DC 20554

RE: Notice of Ex parte Presentation in Non-Restricted Proceedings  
In re Toll Free Service Access Codes (CC Dkt. No. 95-155);  
Access Charge Reform (CC Dkt. No. 96-262);  
Federal-State Joint Board on Universal Service (CC Dkt. No. 96-45);  
Implementation of the Telecommunications Act of 1996:  
Telecommunications Carrier's Use of Customer Proprietary Network  
Information and Other Customer Information (CC Dkt. No. 96-115); and  
Performance Measurements and Reporting Requirements for Operations  
Support System, Interconnection, and Operator Services and Directory  
Assistance (CC Dkt. No. 98-56, RM-9101).

Dear Ms. Salas:

The Office of Advocacy, U.S. Small Business Administration ("Advocacy"), by its undersigned representative and in accordance with Section 1.1206 of the Commission's rules, hereby respectfully submits an original and five copies of this ex parte notification and written presentation - one copy for each of the aforementioned proceedings.

S. Jenell Trigg and Eric E. Menge, Assistant Chief Counsels for Telecommunications for Advocacy, met with Kathryn C. Brown, Chief of the Common Carrier Bureau and Blaise A. Scinto, Counsel to the Bureau Chief, on Wednesday, July 15, 1998. Advocacy discussed issues consistent with its comments previously on the record in the Access Charge Reform (CC Dkt. No. 96-262); Federal-State Joint Board on Universal Service (CC Dkt. No. 96-45); and Toll Free Access Service Codes (CC Dkt. No. 95-155) proceedings. New issues raised in this meeting are itemized below.



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**Subscriber Listings Information (CC Dkt. No. 96-115)**

Advocacy respectfully requests that the Commission include in its regulatory flexibility analysis a discussion of the impact of its rules on independent directory publishers (in addition to Incumbent Local Exchange Carriers ("ILEC") and Competitive Local Exchange Carriers ("CLEC")) pursuant to the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). 5 U.S.C. § 601 et seq.

Advocacy also concurs with the position of the Association of Directory Publishers ("ADP")<sup>1</sup> that the FCC should establish national standards to ensure the timely availability of subscriber listing information ("SLI") on an unbundled basis at "reasonable and nondiscriminatory rates, terms and conditions from any provider of local telephone service" for both primary and supplemental listings." S. Conf. Rep. No. 104-230, at 205 (1996).

Advocacy agrees with ADP that the FCC should establish rate guidelines, however, we do not agree that the Commission should set a benchmark rate. Advocacy is concerned that a suggested benchmark of \$.04 per listing for example, is either too high for those carriers whose costs are considerably less (i.e., BellSouth's rate of \$.04 per listing amounts to an unreasonable 1300% profit)<sup>2</sup> or too low for smaller ILECs whose costs may reflect the absence of computerized or electronic databases. All ILECS should be compensated for their costs plus a reasonable contribution/profit. Therefore, we recommend a benchmark that establishes a maximum level of profit over costs. The difficult issue is, of course, what costs should be compensable.

To properly ascertain costs and determine whether the current rates for SLI are reasonable and nondiscriminatory, and to support any future actions in this proceeding by the Commission, Advocacy encourages the Commission to undertake a complete analysis as to the types and amount of costs incurred by different sized ILECs in the collection and distribution of SLI. These costs should also be compared to the different rate structures for internal/affiliate/subsidiary use, use by non-competitive entities, and use by independent directory publishers. Every effort should be made to acquire this information.

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<sup>1</sup> Comments of the Association of Directory Publishers, June 11, 1996.

<sup>2</sup> In re Petition and Complaint of Florida Independent Directory Publishers to Amend Directory Publishers Database Service Tariff of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company, Florida Public Service Commission, Jan. 13, 1997, at 130 (Testimony of Mr. Janeau).

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**Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Dkt No. 95-115)**

Advocacy respectfully requests that the Commission vacate immediately sua sponte, or alternatively, stay its requirements for computerized safeguard mechanisms (i.e., flags and audit tracking provisions) that were established in its Second Report and Order,<sup>3</sup> and subsequently reissue these requirements as a Further Notice of Proposed Rulemaking to include a sufficient Initial Regulatory Flexibility Analysis ("IRFA").

"The Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action . . . ." 47 CFR § 1.108. However, "[i]t is Commission practice that the filing of a petition for reconsideration tolls the running of the thirty day period." Central Florida Enterprises, Inc. v. FCC, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978) (subsequent history omitted). Given the large number of Petitions for Reconsideration timely filed (most addressing these very issues), the Commission has the authority to vacate this Order in part sua sponte. Alternatively, a stay of the rules would serve the same purpose of eliminating the burden on small entities and would provide additional time to collect sufficient record evidence.

Briefly, the grounds for repeal or stay are the Commission's violations of the Administrative Procedure Act and the Regulatory Flexibility Act, as amended by SBREFA. The Commission's change in its conclusion to not extend Computer III safeguards to all telecommunications carriers is not supported by record evidence; a proper cost/benefit analysis has not been done; small entities did not have proper notice of the extension of the audit and flag computerized safeguards in the NPRM/IRFA; small entities did not have the opportunity to comment on the significant economic impact of such safeguards (including increased personnel costs); and the Final Regulatory Flexibility Analysis ("FRFA") is grossly deficient given the impermissible absence of public notice to small entities. Furthermore, there are additional violations of the RFA in the Commission's analysis of the rules' impact on small entities and "Recordkeeping, Reporting, and other Compliance" requirements.

Advocacy does not believe that an Order on Reconsideration will sufficiently cure these violations, especially the RFA violations. See Southern Offshore Fishing Ass'n v.

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<sup>3</sup> In re Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, CC Dkt. No. 96-115, FCC 98-27 (rel. Feb. 26, 1998).

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Daley, 995 F. Supp. 1411 (M.D. Fla. 1998) (holding that a FRFA prepared after insufficient notice to small entities in the NPRM failed to satisfy APA standards and RFA requirements and thus, was arbitrary and capricious); see also Northwest Mining Ass'n v. Babbitt, No. CIV.A. 97-1013 JLG, 1998 WL 254097 (D.D.C. May 13, 1998) (remanding the rule solely for procedural violations of the RFA).

**Performance Measurements and Reporting Requirements for Operation Support Systems (CC Dkt. No. 98-56)**

Advocacy discussed our concern that the Commission not have "Big Guy Myopia,"<sup>4</sup> which we define as the tendency to establish policies and rules for the entire industry based on the attributes and problems of the large entities - without taking into account the ability of the little guys to comply with the rule - or the need to impose rules at all on the little guys in the first place. The OSS proceeding is a prime example of the potential for BGM.

The Commission is currently reviewing the industry comments filed in response to its NPRM that proposes methodology to analyze the support functions of ILECs when processing orders for new entrants.<sup>5</sup> Advocacy supports efficient order processing by all ILECs, as a means to ensure that effective competition will develop, however Advocacy encourages the Commission to make every effort to distinguish the application of the Petition's requirements for extensive upgrades to operations systems to small carriers and carriers that serve small communities. It is undisputed that vigorous competition is not expected in the near future to rural areas, nor is it likely that there will be a flood of new customers that could not be handled efficiently and promptly by other means. The Commission should not impose blanket requirements on all ILECs without first identifying if there is a need for such measures, and completing a cost/benefit analysis, and a regulatory flexibility analysis for small ILECs.

**Year 2000 Challenges**

Advocacy acknowledges and applauds the comprehensive efforts of the Commission to ensure that the nation's telecommunications services are well prepared to transition into the next century. However, the greatest assistance to small (and large)

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<sup>4</sup> See Commissioner Michael K. Powell, Communications Policy Leadership for the Next Century, 50 Fed. Comm. L.J., 529, 537 (1998).

<sup>5</sup> In re Performance Measurements and Reporting Requirements for Operations Support System, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking, CC Dkt. 98-56, FCC 98-72 (rel. Apr. 17, 1998).

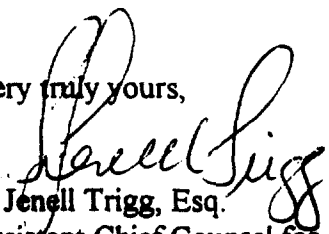
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carriers and collateral industries such as equipment and software manufacturers may be for the Commission to recognize and address fully the cumulative effect of various regulations that impose major changes on telecommunications networks, equipment, and resources. These regulatory impositions directly affect the ability for small telecommunications providers to meet Y2K requirements in a timely matter.<sup>6</sup> Here is a brief list of some of proceedings that involve major changes to network systems, hardware and/or software, in addition to a strain on personnel and economic resources:

1. Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment By Persons With Disabilities
2. Universal Service
3. Performance Measures and Reporting Requirements for Operations Support Systems
4. Customer Proprietary Network Information

If you have any questions regarding this filing, please contact me at 202-205-6950.

Very truly yours,

  
S. Jenell Trigg, Esq.  
Assistant Chief Counsel for  
Telecommunications

Office of Advocacy  
U.S. Small Business Administration  
409 Third Street, SW  
Washington, DC 20416

attachment: Small Businesses as Consumers Chart  
Presentation to Kathryn C. Brown Summary

cc: The Honorable William E. Kennard, Chairman  
Ms. Kathryn C. Brown, Chief, CCB  
Ms. Blaise Scinto, Counsel to the Bureau Chief, CCB  
Ms. Catherine J.K. Sandoval, Director, OCBO

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<sup>6</sup> One of the priorities of the U.S. Small Business Administration is to ensure that all small companies are well informed about the Y2K problem and have the available resources to meet the challenge. For more information about the SBA's efforts, please see our home page: <http://www.sba.gov>.



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OFFICE OF CHIEF COUNSEL FOR ADVOCACY

**Presentation to  
Kathryn C. Brown, Chief, Common Carrier Bureau  
Federal Communications Commission  
July 15, 1998**

**I. THE FCC'S DUTY TO ADDRESS SMALL BUSINESS ISSUES COMES UNDER THREE STATUTORY PROVISIONS**

- \* The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). 5 U.S.C. § 601 et seq.
- \* The Telecommunications Act of 1996, Section 257 - Market Entry Barriers. 47 U.S.C. § 257.
- \* The Communications Act of 1934's duty to serve in the public interest. 47 U.S.C. § 151 et seq.

**II. BRIEF OVERVIEW OF REGULATORY FLEXIBILITY ACT (RFA)**

- \* Purpose is to minimize, if not eliminate, significant economic impact on a substantial number of small entities.
- \* Notice of impact, discussion of significant alternatives, and costs to small businesses is paramount at NPRM stage.
- \* Final analysis of significant alternatives must include legal, policy, and factual justification of alternatives (those consistent with stated objectives) that were rejected.
- \* Small Entities include small businesses (as defined under the Small Business Act, 5 U.S.C. § 632), small governmental jurisdictions, and non-profit organizations.
- \* A business' dominance in its field of operation is evaluated on a "national basis." 13 CFR § 121.102. Therefore, small ILECs are small entities under the RFA.

**Other Important Requirements of RFA/SBREFA**

- \* Outreach to small entities beyond publication in Federal Register. 5 U.S.C. § 609.
- \* Small Entity Compliance Guides in plain English for each rule (or group of related rules). § 212 of SBREFA (Codified at 5 U.S.C. § 601 Note).

**III. OVERALL SUMMARY OF ADVOCACY'S CONCERNS**

- \* "Big Guy Myopia"<sup>1</sup> tendency to establish policies and rules for entire industry with only the larger carriers in mind or to address problems manifested only in large carriers.
- \* Neglect to address impact of rules/policies on small business consumers.
- \* Preparation of the RFA analyses after the development of policy and rules - impermissibly post hoc and too late to make adjustments to address small business issues.

**MAJOR SUBSTANTIVE ISSUES INCLUDE:**

- |  |        |
|--|--------|
| * Universal Service and Access Charge Reform | * CPNI |
| * Toll Free Access Codes                     | * OSS  |
| * Subscriber Listings Information            | * Y2K  |

**IV. RECOMMENDATIONS**

- \* Encourage increased communication between Advocacy and CCB.
- \* Development of RFA analyses during deliberations - and not post hoc.
- \* Increased outreach to small entities - better access to key personnel including CCB front office, creation of task forces, and Bureau Chief/staff appearance at telecommunications roundtables for small businesses.

<sup>1</sup> See Commissioner Michael K. Powell, Communications Policy Leadership for the Next Century, 50 Fed. Comm. L.J., 529 (1998).





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## **BY ANY MEASURE - SMALL BUSINESSES ARE IMPORTANT CONSUMERS OF TELECOMMUNICATIONS SERVICES!**

The Telecommunications Act of 1996 mandates that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. § 254(b)(3).

Given the tremendous growth in telecommunications technology and services - small businesses, which are the majority of businesses in the U.S., are a major consumer group. Multiple sources confirm that the majority of small businesses have more than one telephone line.

**Q: How many telephone lines does the average small businesses have?**

**A:**  - 

Source: *Who Will Connect Small Businesses To The Information Superhighway?*, National Federation of Independent Businesses Foundation, December 1994, at 7 (46.9% of small businesses have 2-3 lines and 18.4% have 4-6 lines. Overall, 72.7% of small businesses have more than one line.).

**A:** 

Source: *America's Small Business Speaks Out*, California Small Business Association National Business Telephone User Poll, April 12, 1997, at 4 (8 lines: 4 for voice services, one dedicated line each for a fax and modem, one cellular/car telephone line, and almost one line for 800 service. Moreover, just under 4-in-10 small business have 11 or more lines for business use.).

**A:** 

Source: PNR Associates Study, FCC Press Release, *Commission Reforms Interstate Access Charge Systems*, CC Dkt. No. 96-262, May 7, 1997 (4 lines).